IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4488 OF 2006

Dadu Bharma Varate. .. Petitioner.

vs.

Sou. Sheela Annasaheb Patil. .. Respondent.

Mr. A.A. Gorge i/by Mr. N.R. Bubna

for petitioner.

Mr. Girish S. Godbole for respondent.

CORAM : A.P. DESHPANDE, J.

DATE : 6th November, 2006.

P.C.

. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of parties.

2. The petitioner herein is the original defendant in Regular Civil Suit No. 30 of 2002 pending on the file of the Civil Judge, Junior Division, Jaisinghpur. The suit is filed by the respondent-plaintiff for declaration and injunction. The defendant was proceeded against by an order of "no cross." Hence, the petitioner moved an application for setting aside the order of no cross-examination. The trial Court rejected the

said application mainly for the reasons that the District Court has directed the disposal of the suit within four months. It is relevant to note that the District Court, Kolhapur while rejecting Misc. Civil Application had directed disposal of the suit within four months. The trial Court had actually adjourned the matter to a future date but as the District Judge passed an order to decide the matter within four months, fresh notices came to be issued and the hearing of the suit was preponed by the trial Court. It is on account of the defendants absence on the preponed date which has resulted in passing of the order of 'No cross'.

3. Perused the order passed by the trial Court. The subject matter of the suit is an agricultural land admeasuring around 3 hectares. The learned counsel for the petitioner in this fact situation submits that depriving the petitioner to cross-examine the plaintiff and her wintnesses is bound to result in miscarriage of justice. The learned counsel for the petitioner has further brought to my notice that this Court by an order dated 11.9.2006 while issuing notice had directed the petitioner to deposit cost of Rs. 7500/- as the Court was inclined to permit the petitioner to cross-examine the witnesses and that the petitioner has in fact deposited the amount as directed by this Court. The learned counsel for the petitioner

assures this Court that the defendant will cooperate in early disposal of the suit and will not seek adjournment. In view of this assurance and in furtherance of cause of justice, the present writ petition deserves to be allowed and I accordingly allow the same. The impugned order dated 24.4.2006 passed by the 2nd Joint Civil Judge, Junior Division, Jaysinghpur below Exhibit-96 in Regular Civil Suit No. 30 of 2002 is quashed and set aside. The application moved by the petitioner before the trial Court at Exhibit-96 is allowed. The order of "no cross" passed by the trial Court dated 22-11-2005 is quashed and set aside. The trial Court shall permit the petitioner/defendant to cross-examine the plaintiff and her witnesses and shall decide the suit after granting opportunity of hearing to both the parties. Needless to mention that the petitioner/defendant shall not seek any adjournment in the matter and the suit would be disposed of as expeditiously as possible.

4. Rule is made absolute in the above terms subject to further payment of costs of Rs. 5,000/- by the petitioner to the defendant. The costs shall be paid within a period of four weeks from today in the trial Court. The respondent is also permitted to withdraw a sum of Rs.7500/- which has been deposited by the petitioner under order passed by this Court dated 11.9.2006 towards part of the

costs.

(A.P. Deshpande, J.)